

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE Eastern DISTRICT OF TEXAS
Beaumont DIVISION
FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JUL 24 2018

PETITION FOR A WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY

BY
DEPUTY _____

Jamaar La'hendrick Tukes
PETITIONER
(Full name of Petitioner)

O.L. Luther Unit
CURRENT PLACE OF CONFINEMENT

VS.

2114239
PRISONER ID NUMBER

Lorle Davis - Director TDCJ
RESPONDENT
(Name of TDCJ Director, Warden, Jailor, or
authorized person having custody of Petitioner)

1:18 cv 363
CASE NUMBER
(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

PETITION

What are you challenging? (Check all that apply)

- ☒ A judgment of conviction or sentence, (Answer Questions 1-4, 5-12 & 20-25)
probation or deferred-adjudication probation.
- ☐ A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)
- ☐ A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)
- ☐ Other: _____ (Answer Questions 1-4, 10-11 & 20-25)

All petitioners must answer questions 1-4:

Note: In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: _____
1A Judicial District - Jasper County
 2. Date of judgment of conviction: 01/30/2017
 3. Length of sentence: (30) Thirty Years
 4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: 12, 747 JD Aggravated Robbery
-

Judgment of Conviction or Sentence, Probation or Deferred-Adjudication Probation:

5. What was your plea? (Check one) ☐ Not Guilty ☒ Guilty ☐ Nolo Contendere

6. Kind of trial: (Check one) ☐ Jury ☒ Judge Only

7. Did you testify at trial? ☐ Yes ☒ No

8. Did you appeal the judgment of conviction? ☐ Yes ☒ No

9. If you did appeal, in what appellate court did you file your direct appeal? N/A

Cause Number (if known): N/A

What was the result of your direct appeal (affirmed, modified or reversed)? _____

What was the date of that decision? N/A

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: N/A

Result: N/A

Date of result: N/A Cause Number (if known): _____

If you filed a petition for a *writ of certiorari* with the United States Supreme Court, answer the following:

Result: N/A

Date of result: N/A

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed. ☒ Yes ☐ No

11. If your answer to 10 is "Yes," give the following information:

Name of court: 1A Judicial District

Nature of proceeding: Writ of Habeas Corpus

Cause number (if known): 12747 JD-HC-1

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: May 12, 2017

Grounds raised: Denial of Effective Assistance of Counsel/By failing to convey Applicant's Acceptance of a 15 year plea offer

Date of final decision: 12/6/2017

What was the decision? Denied without written order

Name of court that issued the final decision: Court of Criminal Appeals of Texas

As to any second petition, application or motion, give the same information:

Name of court: N/A

Nature of proceeding: _____

Cause number (if known): _____

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: N/A

Grounds raised: N/A

Date of final decision: _____

What was the decision? _____

Name of court that issued the final decision: _____

If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition? ☐ Yes ☒ No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: _____

(b) Give the date and length of the sentence to be served in the future: _____

- (c) Have you filed, or do you intend to file, any petition attacking the judgment for the sentence you must serve in the future? ☐ Yes ☒ No

Parole Revocation:

13. Date and location of your parole revocation: N/A
14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation? ☐ Yes ☐ No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

Disciplinary Proceedings:

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon? ☐ Yes ☐ No
16. Are you eligible for release on mandatory supervision? ☐ Yes ☐ No
17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation: _____

Disciplinary case number: _____

What was the nature of the disciplinary charge against you? _____

18. Date you were found guilty of the disciplinary violation: _____

Did you lose previously earned good-time days? ☐ Yes ☐ No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing: _____

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status: _____

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure? ☐ Yes ☐ No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: _____

Date of Result: _____

Step 2 Result: _____

Date of Result: _____

All petitioners must answer the remaining questions:

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

- A. **GROUND ONE:** Ineffective Assistance of Counsel/By failing to Convey
Petitioner's acceptance of a 15 year plea bargain.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel was ineffective in conveying Petitioner's
acceptance of States 15 year plea offer. Counsel
also failed to inform Petitioner of any deadline
on the plea bargain offer.

- B. **GROUND TWO:** Violation of Petitioner's Fifth and
Fourteenth Amendment Due Process Rights

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner was denied his Fifth and Fourteenth
Amendment rights when he was denied
his request for new Counsel based on
inefficiency.

C. **GROUND THREE:** _____

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

D. **GROUND FOUR:** _____

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

21. Relief sought in this petition: _____

22. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation or disciplinary proceeding that you are attacking in this petition? ☐ Yes ☐ No
If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.
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-

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)? ☐ Yes ☐ No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition? ☐ Yes ☐ No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☐ No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed. _____

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

Timeliness of Petition:

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.¹

¹ The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Wherefore, petitioner prays that the Court grant him the relief to which he may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on

July 19, 2018 (month, day, year).

Executed (signed) on July 19, 2018 (date).

Jamaal Zuker *2114239
Signature of Petitioner (required)

Petitioner's current address: O.L Luther Unit - 1800 Luther Dr.
Navasota, Tx 77868

AFFIDAVIT OF JAMAAR L. TUKES

In December of 2015 after being charged with aggravated robbery I requested Counsel and was appointed Ed Tracy.

After I pointed out that counsel was also appointed to female co-defendant Katie Shaw, state appointed me Ysidra Kyles as Counsel.

Counsel met with me at the Jasper County Jail shortly after receiving notice of appointment and briefly discussed the case.

In April of 2016 after almost four months of Counsel continuing to ignore my request for a conference I faxed the D.A.'s office. Shortly afterwards I sent a letter to the Judge requesting new Counsel based on Counsel's inefficiency.

Shortly after receiving a copy of the letter sent to the Judge, trial Counsel finally met with me and informed me that, "This is not a buffet, you don't get what you want."

Counsel also informed me of the states 15 year plea offer but failed to inform me of any deadline.

Counsel claims to have informed me of the states plea bargain having a deadline of July 29, 2016 but at my November 2016 pre-trial hearing Counsel was still informing me that the offer was still on the table.

After male co-defendant Ronnie Coffey's trial in January 2017 at an arraignment on January 18, 2017 for pending drug charges I informed Counsel that I would sign for the 15 years. Counsel informed me that she would wait and see if the D.A. said anything.

A week later Counsel informed me that the offer had went up from 15 to 30 years and that trial was set for February 6, 2017.

Due to Counsel's inefficiency and failure to investigate or file any motions, and the Court's refusal to give me another trial Counsel I felt I could not win at trial and felt forced to sign for the 30 years.

Irregardless of Counsel's claim, at no time during representation did Ms. Kyles inform me that the proposed 15 year plea offer had a deadline. Had Counsel informed me of the deadline I would have never allowed the 15 year plea offer to expire without accepting it. However, because of Counsel's failure to inform me of the deadline I was forced to accept the subsequent 30 year plea bargain, which was twice as long as the previous and more favorable plea deal. Accept for Counsel's failure to inform me of the 15 year plea offer deadline I would have accepted the earlier and more favorable plea bargain.

Further Affiant sayeth not.

Unsworn Declaration

I Jamaar Tukes, TDCS NO. 2114239,
persuant to 28 USC § 1746 do hereby declare
under penalty of perjury that the foregoing
statements are true and correct.

Executed this 19, day of July, 2018.

Jamaar L. Tukes
O.L. Luther Unit
1800 Luther Dr.
Navasota, TX 77868

Jamaar Tukes
Declarant

 *** FAX TX REPORT ***

TRANSMISSION OK

JOB NO.	2698
DESTINATION ADDRESS	3841309
SUBADDRESS	
DESTINATION ID	
ST. TIME	04/04 20:25
TX/RX TIME	00' 20
PGS.	1
RESULT	OK
COMM. MODE	ECM

** Need Copy **
INMATE REQUEST FORM

D.A. Investigator S.O.# 31519
 To: Mrs. Connie Jordan From: Jamaar Tukes

Date: 4-4-16 Time: 4:03pm Block: 87 Cell: 167A

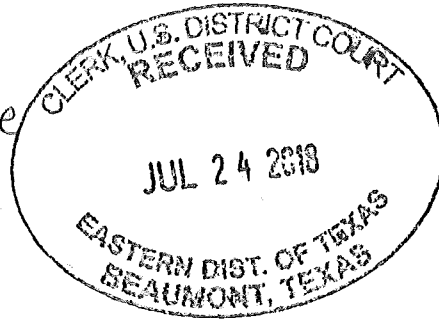
Message or request: I would like to know what are the chances of me getting probation. I have asked my lawyer to do it several times but she still hasn't asked the D.A. yet. I'm willing to sign for up to 15 if he agrees, and I would like to fire my lawyer and get one that will actually work for me if he says no. If you can make time I would greatly appreciate it if you would come talk to me at the County Jail.
 Thanks

Receiving Officer: _____ Inmate Signature: Jamaar Tukes

Disposition (DO NOT WRITE BELOW THIS LINE):

Date: _____ Time: _____ By: _____

U.S District Clerks Office
Beaumont Division
Jack Brooks
Federal Bldg. + U.S Courthouse
300 Willow St. STE #104
Beaumont, TX 77701



Re:

Petition for Writ of Habeas Corpus 2254

Dear Sir or Madam

Enclosed is the Original copy of Petitioner's Federal Writ of Habeas Corpus 2254 in the above-styled cause. Please file this and bring it to the attention of the Court. Please serve a copy of this petition to the attorney representing the State as provided pursuant to Section 2254.

Thank you for your assistance in this matter.

Sincerely,

James Luke
Petitioner Pro Se Offender
TDCJ ID# 2114239